



U.S. Department Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20535

March 17, 1997

Randall B. Strong, Esq.
503 Ward Road
Baytown, Texas 77520

Dear Mr. Strong:

This refers to two annexations (Ordinance Nos. 95-13 and 95-33) to the City of Webster in Harris County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our May 3, 1996, request for additional information on January 15 and March 11, 1997; supplemental information was received on March 5, 1997.

The Attorney General does not interpose any objection to the commercial annexation that was the subject of Ordinance No. 95-13. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the annexation contained in Ordinance No. 95-33, however, we cannot reach the same conclusion. We have considered carefully the information you have provided, as well as Census data, and comments and information from other interested parties. According to the 1990 Census, Hispanic residents constitute 19 percent and black residents constitute 5 percent of the city's total population, and 17 and 4 percent, respectively, of the voting age population. The annexation in Ordinance No. 95-33 adds approximately 1,162 persons to the city's total population, all of whom appear to be white. Thus, the proposed annexation will reduce the city's Hispanic proportion to 15.0 percent and the black proportion to 4.2 percent of the total population.

Our analysis indicates that there is a residential area adjacent to the city limits that if annexed, would have lessened the impact of annexing the all-white area included in Ordinance No. 95-33. This area is to the northeast of the city and is located within Census Block 101B of Tract 037304. This block has a significant minority population percentage: Hispanic persons constitute 39 percent and black residents constitute 7 percent of the total population. According to information provided by the city, the annexation of Block 101B alone would have increased the city's Hispanic population to 20.2 percent and the black population to 5.3 percent of the total.

The city has offered several reasons for its refusal to annex Block 101B. First, it alleges that it was unaware that Block 101B had a significant minority population at the time it was considering its 1995 annexations and that its racial/ethnic composition did not play a role in the city's annexation decisions. Our analysis, however, revealed that during the annexation process, the Hispanic councilmember and another leader of the Hispanic community opposed the annexation contained in Ordinance No. 95-33 indicating that if the city was going to annex the all-white residential property in Ordinance No. 95-33, it should also annex the residential property contained in Block 101B. They requested city officials at a planning and zoning meeting and at council meetings to consider annexing Block 101B, but their requests were refused.

Although there is some dispute regarding whether the city manager, who is central in deciding which areas will be considered for annexation into the city, actually stated that the reason Block 101B would not be annexed was because of its ethnic composition, conversations between the city manager and at least two city councilmembers tend to corroborate that this was indeed the city manager's view. Given the role of the city manager in the city's annexation process, and the concerns expressed to city officials by representatives of the minority community regarding the city's failure to include Block 101B in the annexation, the city's assertions that it was unaware of the racial/ethnic make-up of Block 101B at the time of the 1995 annexation is at best disingenuous.

Second, the city argues that Block 101B could not be annexed because it is in a track of land that straddles the extraterritorial jurisdiction ("ETJ") of the city. Our analysis revealed that Block 101B is clearly within the city's ETJ line and that the city's failure to annex the area could not be explained satisfactorily on this basis.

Third, the city claims that the population from Block 101B would place a strain on city services that would be too great for the city to absorb, and that unlike the area annexed by Ordinance No. 95-33, Block 101B would not generate enough revenue to cover the cost of extending services thereto. The city maintains that an important consideration in determining whether to annex a particular parcel of land is the city's assessment that the revenues generated from the area will offset the cost of providing municipal services to it. With regard to Ordinance No. 95-33 and Block 101B, however, no specific data or precise information regarding anticipated revenues or costs for municipal services was provided by the city in support of its position. Information we obtained from city officials and municipal records indicates that the cost of providing services to Block 101B would not be any more, and might even be less, than the cost of providing services to the area annexed by Ordinance No. 95-33.

Fourth, the city also alleges that annexing the area included in Ordinance No. 95-33 would serve to clarify the city's northern boundaries between it and the City of Houston by creating an easily distinguishable boundary. Information contained in city documents and provided by city officials clearly indicates that annexing Block 101B would have enabled the city to use a major thoroughfare, El Camino Real, as a continuous, and easily distinguishable boundary line for the northeastern part of the city. The failure to include Block 101B leaves the city with an irregular boundary in the north.

Finally, the city suggests that the area contained in Ordinance Nos. 95-13 and 95-33 were more desirable than Block 101B because of their profitability. Although our investigation indicates that it is likely that the area annexed by Ordinance No. 95-33 will generate more revenue than Block 101B, no information has been presented by the city to suggest that annexing Block 101B would create a deficit in the city's budget because Block 101B has an insufficient tax base to cover the cost of the additional services it will need. Moreover, even though it appears that the area annexed by Ordinance No. 95-33 has the ability and/or the potential to provide the city with greater revenues than Block 101B, the fact that the other area the city annexed in 1995 is vacant and will generate no revenue unless and until it is developed suggests that generating revenue could not have been the city's only motivation in deciding not to annex Block 101B. In fact, as stated above, with regard to the annexation of areas other than Block 101B, the city seems most concerned that the revenues generated by the property simply offset the cost of providing municipal services to it.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). To demonstrate the absence of a discriminatory purpose with respect to an annexation, a jurisdiction must demonstrate that the revision of municipal boundary lines to "includ[e] certain voters within the city [while] leaving others outside," was not based, even in part, on race. Perkins v. Matthews, 400 U.S. 379, 388 (1971). See also City of Pleasant Grove v. United States, 479 U.S. 462 (1987).

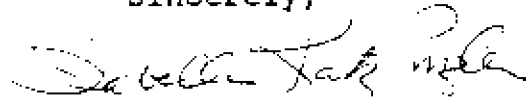
The following facts weigh heavily here in our assessment regarding whether the city's burden has been met: (1) the city failed to annex an area with a significant minority population, while it was simultaneously annexing an all-white area that when added to the city's population will reduce the minority proportion; (2) the city deviated from what appears to be its primary annexation consideration in deciding not to annex Block 101B (i.e., that the cost of providing municipal services not be outweighed by the revenues anticipated from the annexation); (3) the city failed to achieve its purported objective of establishing an easily distinguishable boundary in the north in undertaking the annexation in Ordinance No. 95-33. This objective would have been more fully realized, however, had Block 101B been annexed; and (4) the city in the decision-making process appears to have been apprised by representatives of the minority community of their concerns about excluding from the city the population that resides in Block 101B, but, contrary to these concerns, voted in favor of annexing only the all-white area included in Ordinance No. 95-33.

Additionally, the information available to us suggests that the city's agent in determining which areas were eligible for annexation consideration refused to consider Block 101B for annexation because of the racial/ethnic background of the persons who reside in the area. Thus, significant questions persist regarding a lack of even-handedness in the city's application of its annexation policy and the city's annexation choices appear to have been tainted, if only in part, by an invidious racial purpose. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983); City of Rome v. United States, 446 U.S. 156, 172 (1980). An annexation or any other voting change adopted for racial reasons, however, can have no legal effect under Section 5. City of Richmond v. United States, 422 U.S. at 378.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the annexation contained in Ordinance No. 95-33. We note under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objection by the Attorney General remains in effect and the annexation continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10, 51.11, 51.45, and 51.48(c) and (d).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Webster plans to take concerning these matters. If you have any questions, you should call Colleen Kane-Dabu (213-894-2931) of our staff. Refer to File No. 96-1006 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,



Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division